



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2019-0573, FRL-10018-79-Region 10]

Air Plan Approval; Washington; Infrastructure Requirements for the 2010 Sulfur Dioxide and 2015 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Whenever the Environmental Protection Agency (EPA) promulgates a new or revised National Ambient Air Quality Standard (NAAQS), the Clean Air Act requires each state to make a State Implementation Plan (SIP) submission to establish that its SIP provides for the implementation, maintenance, and enforcement of the revised NAAQS. This type of SIP submission is commonly referred to as an infrastructure SIP submission. The EPA is approving the State of Washington's September 30, 2019 and April 3, 2020, SIP submissions as meeting specific infrastructure requirements for the 2010 sulfur dioxide and 2015 ozone NAAQS.

DATES: This final rule is effective [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2019-0573. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>, or please contact the person identified in the FOR FURTHER INFORMATION CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth

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SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

I. Background Information

On May 26, 2020, the EPA proposed to approve Washington’s September 30, 2019 and April 3, 2020, SIP submissions as meeting certain infrastructure requirements of the Clean Air Act (CAA) for the 2010 sulfur dioxide (SO₂) and 2015 ozone NAAQS (85 FR 31421). The initial public comment period for this proposed action ended on June 25, 2020. Due to an administrative error, the EPA omitted the technical support document (TSD) relevant to the proposed action from the docket during the initial comment period, open from May 26, 2020 to June 25, 2020. The EPA corrected the administrative error and on September 3, 2020, we provided an additional 30 days for public comment on the proposed action (85 FR 54960). The public comment period ended on October 5, 2020. The EPA received adverse comments on the proposal.

II. Response to Comments

The EPA received two adverse comments during the initial comment period related to our administrative docket error that left out the TSD relevant to the proposed action. The EPA addressed these comments by including the TSD document in the docket and providing an additional 30-day comment period. The EPA received one additional comment, unrelated to our administrative docket error, during the initial comment period. We have summarized and responded to the adverse comment below. The full text of the submitted comment may be found in the docket for this action.

Comment – Adequate Resources

Summary – An anonymous commenter stated that, in its proposed approval of CAA section 110(a)(2)(E), the EPA failed to evaluate adequate funding and resources necessary to carry out the functions delegated to the state and required by the state to carry out the functions

of the SIP. The commenter asserted that the EPA must audit Washington's finances and accounting to make an affirmative determination as to whether the state has the necessary funding and resources. The anonymous commenter also stated that the EPA should affirmatively determine whether Washington actually has the necessary personnel to carry out and operate programs required under the SIP in light of recent COVID-19 concerns.

Response – CAA section 110(a)(2)(E)(i) requires each state to provide necessary assurances that the state will have adequate personnel, funding, and authority under state law necessary to carry out the SIP during the five years following the SIP submission.¹ CAA section 110 does not mandate a specific methodology for the EPA to evaluate the adequacy of resources to implement the SIP. See 76 FR 42549 (July 19, 2011), at 42554. The EPA disagrees with the commenter's assertion that an audit of the state's finances and accounting practices is required in order to satisfy the requirements of 110(a)(2)(E)(i). The EPA's role in evaluating a SIP submission is to assure that the air agency's SIP contains the necessary structural requirements in order to meet the requirements of a new or revised NAAQS. The EPA's role in approving an infrastructure SIP submission is to determine whether the submission addresses the necessary requirements of the Act, not to evaluate the way in which a SIP is being implemented. See *Montana Env'tl. Info. Ctr. v. Thomas*, 902 F.3d 971, 978 (9th Cir. 2018).

In our proposed action, we identified Revised Code of Washington (RCW) 70.94² as providing the Washington Department of Ecology (Ecology) Director authority to hire personnel to carry out duties of the department, in coordination with local clean air agencies and the Energy Facilities Site Evaluation Council (funded and authorized separately under RCW 80.50). According to the Washington Department of Ecology Budget and Program Overview 2019-2021, Ecology has an operating budget of \$43.7 million to perform its air program functions (\$10.1

¹ EPA guidance identifies a five-year period following the SIP submission as the relevant timeframe for this evaluation. See Stephen D. Page, Director, Office of Air Quality Planning and Standards. "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Section 110(a)(1) and 110(a)(2)." Memorandum to EPA Air Division Directors, Regions 1 through 10, September 13, 2013, at page 40 (2013 guidance).

² Recently re-codified to RCW 70A.15, with no substantive changes to the statute.

million from federal funds, with the remainder from state funds and other permit and fee programs). Specifically, Washington receives CAA sections 103 and 105 grant funds from the EPA and provides state matching funds necessary to carry out SIP requirements. As part of our September 3, 2020 reopening of the public comment period, we supplemented the docket with the general CAA section 105 program grant supporting materials for informational purposes, including our most recent review of performance metrics under the grant at the time.³ The EPA expects that the COVID-19 pandemic may have impacts on state revenues and could theoretically impact a state's ability to adequately implement its SIP. However, the impacts of the pandemic on Washington's personnel and resources available to satisfy the requirements of CAA section 110(a)(2)(E) in the future is speculative at best. Based on assurances in the state's submission and the analysis conducted as part of the EPA's grant programs, we have a reasonable basis to conclude that Washington has satisfied the requirements of section 110(a)(2)(E).

The EPA finds that Washington has provided the necessary assurances of adequate sources of personnel, funding, and authority under state law to implement its SIP for purposes of the 2010 SO₂ and 2015 ozone NAAQS, consistent with the EPA's 2013 guidance. Therefore, it is appropriate to finalize the proposed finding that Washington's SIP satisfies the requirements of CAA section 110(a)(2)(E).

III. Final Action

The EPA is approving Washington's September 30, 2019 and April 3, 2020, infrastructure SIP submissions as meeting specific infrastructure requirements of the CAA. We find that the Washington SIP meets the following CAA section 110(a)(2) infrastructure elements for the 2010 SO₂ and 2015 ozone NAAQS: (A), (B), (C) (except for those provisions covered by the PSD FIP), (D)(i)(II) (except for those provisions covered by the PSD and regional haze

³ The EPA subsequently updated our review of performance metrics under the CAA section 105 grant program for Federal Fiscal Year 2020, which is included in the docket for this action.

FIPs), (D)(ii) (except for those provisions covered by the PSD FIP), (E), (F), (G), (H), (J) (except for those provisions covered by the PSD FIP), (K), (L), and (M).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated July 15, 2019.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60**

days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 9, 2021.

Michelle L. Pirzadeh,
Acting Regional Administrator,
Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart WW—Washington

2. In § 52.2470, Table 2 in paragraph (e) is amended by adding an entry for “110(a)(2)

Infrastructure Requirements—Sulfur Dioxide Standards and 2015 Ozone Standards”

immediately below the entry “Interstate Transport for the 2015 Ozone NAAQS” to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(e) * * *

TABLE 2 –ATTAINMENT, MAINTENANCE, AND OTHER PLANS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
* * * * *				
110(a)(2) Infrastructure and Interstate Transport				
* * * * *				
110(a)(2) Infrastructure Requirements—Sulfur Dioxide Standards and 2015 Ozone Standards	Statewide	9/30/19 and 4/03/20	[Insert date of publication in the <u>Federal Register</u>, [Insert <u>Federal Register</u> citation]	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
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